

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOSEPH W. BUECHEL,)
vs.)
Plaintiff,)
vs.) CIVIL NO. 08-cv-132-JPG
UNITED STATES OF AMERICA, *et al.*,)
Defendants.)

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff, an inmate at USP-Hazelton, brings this pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, *et seq.* Plaintiff seeks damages for alleged medical practice and negligence. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

THE COMPLAINT

Briefly, while confined at FCI-Greenville, Plaintiff alleges that he contracted a severe staphylococcus infection due to negligent and improper sterilization and hygiene practices in the prison laundry where he works. Plaintiff further claims that his infection was made worse through negligent diagnosis and treatment. As a result, Plaintiff spent three weeks in a hospital.

DISCUSSION

Upon careful review of the complaint, the Court finds that Plaintiff's claims against the United States of America should not be dismissed at this point in the litigation. The United States is the proper defendant in a FTCA action. *See 28 U.S.C. § 2679(b).*

Plaintiff's claims against the Bureau of Prisons, however, should be dismissed pursuant to 28 U.S.C. § 1915A. The Bureau of Prisons, as a federal agency, is not amenable to suit. *See FDIC v. Meyer*, 510 U.S. 471, 483-486 (1994).

DISPOSITION

IT IS HEREBY ORDERED that the Bureau of Prisons is **DISMISSED** from the action, with prejudice.

The Clerk is **DIRECTED** to prepare a summons for the **UNITED STATES OF AMERICA**. The Clerk shall forward the summons, USM-285 forms submitted by Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The Clerk is **FURTHER DIRECTED** to prepare a copy of the summons, a copy of the complaint, and a copy of this Order to be served by the United States Marshal on the **ATTORNEY GENERAL of the UNITED STATES**.

The United States Marshal is **DIRECTED** to serve the original summons and complaint on

the **UNITED STATES ATTORNEY for the SOUTHERN DISTRICT OF ILLINOIS**, and a copy of the summons and complaint on the **ATTORNEY GENERAL of the UNITED STATES**.

IT IS FURTHER ORDERED that Plaintiff shall serve upon the United States Attorney for the Southern District of Illinois, a copy of every further pleading or other document submitted for consideration by this Court. He shall include, with the original paper to be filed with the Clerk of the court, a certificate stating the date that a true and correct copy of any document was mailed to the United States Attorney. Any paper received by a district judge or magistrate which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

IT IS FURTHER ORDERED that pursuant to Local Rule 72.1(a)(2), this cause is referred to a United States Magistrate Judge for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be referred to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

IT IS SO ORDERED.

Dated: July 9, 2008.

s/ J. Phil Gilbert
U. S. District Judge